UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH WILLS

Appeal 2007-2001
Application 09/698,077
Technology Center 3600

Decided: November 27, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO,
and ALLEN R. MACDONALD, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 29, 30, 32, 33, and 35 through 39. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a). In a facsimile communication received on October 23, 2007, Appellant waived the confirmation of attendance at the Oral Hearing set for November 6, 2007.

Representative independent claim 29 is reproduced below:

29. A method for retrieving information, comprising:

sending a request identifying at least a first site, a second site and a type of location of interest; and

receiving information associated with the first and second sites and selected based on the type of location of interest and selected using a geometric shape generated based on the first and second sites, the geometric shape having been generated based on a first distance value representing the distance between the first and second sites, and a second distance value representing a function performed on the first distance value.

The following references are relied by the Examiner:

Bellesfield	US 6,498,982 B2 (effective filing date May 28, 1993)	Dec. 24, 2002
Delorme	US 5,802,492 (filed June 11, 1996)	Sep. 1, 1998
Bouve	US 5,682,525 (filed Jan. 11. 1995)	Oct. 28, 1997

All claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 29, 30, 38, and 39, the Examiner relies upon Bellesfield in view of Delorme. Lastly, in a second stated rejection, the Examiner relies upon Bouve in view of Delorme as to claims 32, 33, and 35 through 37.

Rather than repeat the positions of Appellant and the Examiner, reference is made to the Brief and Reply Brief for Appellant's positions, and to the Answer for the Examiner's positions.

OPINION

Generally, for the reasons set forth by the Examiner in the Answer, we sustain the two separately-stated rejections under 35 U.S.C. § 103

encompassing all claims on appeal. Appellant presents common arguments with respect to corresponding features recited in independent claims 29 and 38 in the first stated rejection, and takes the same approach with respect to independent claims 32 and 35 in the second stated rejection. No arguments are presented before us as to any dependent claims. Appellant does not argue before us that the applied prior art in both stated rejections is not properly combinable within 35 U.S.C. § 103.

Appellant notes at the bottom of page 1 of the principal Brief on appeal the existence of a related appeal of US Patent Application 10/367,001 to the same inventor, a decision of which was rendered on May 31, 2007. Appellant's Supplemental Appeal Brief electronically filed on October 11, 2007, in this appeal submits a copy of that opinion as well as the Request for Rehearing of that decision in that appeal. Page 1 of this Supplemental Appeal Brief otherwise indicates the identity of the arguments presented therein with those submitted in the earlier noted, principal Brief here.

With this in mind, and to simplify the issues here, we incorporate by reference the discussion in our prior decision Appeal no. 2007-0967 in both its principal decision and decision on rehearing. Of additional note here, we emphasize that this present appeal is based upon an application that is the parent application to the application of the related appeal. We also emphasize here that the Bellesfield patent relied upon in this appeal contains the same disclosure as the Bellesfield patent relied upon by the Examiner in the related appeal because the Bellesfield patent relied upon in this appeal is a continuation of the Bellesfield patent in the prior appeal. Additionally, the

Bouve patent relied upon by the Examiner in this appeal is the same Bouve patent relied upon by the Examiner in the prior appeal. Therefore, the bulk of our discussion in this appeal relates to the Delorme patent which was not relied upon by the Examiner in the prior appeal.

The claims on appeal contain substantial passive recitations of significant features. The generating feature of independent claim 29 is only passively and not positively recited in independent claim 29 in contrast to the positive recitations of the generating features in independent claim 38. Similarly, in contrast to the positive step of determining in independent method claim 32, independent claim 35 only presumes the pre-generation of a given range. All claims on appeal also contain significant recitations of non-functional descriptive material in the form of various data/information characterization descriptors. Because of this, the claims are also subject to significant subjective artisan/user determinations. No claim on appeal positively recites a computer system or machine that performs directly or impliedly the functions of the recited methods, such that the artisan/user may perform the associated recited functionalities with or without the assistance of a prior art system. Thus, the actual steps of determining, generating shapes based on first values and second values or subjectively varying distances/ranges falls clearly within the ambit of the teachings of the applied prior art performable by the artisan/user in these references.

Although we recognize as well as Appellant notes at the bottom of page 1 of the Reply Brief that the Examiner's responsive arguments essentially repeat the positions with respect to each of the three references relied upon respectively in the two stated rejections, the Examiner has

uniquely taken the approach of setting forth corresponding teachings and suggestions of both references in each stated rejection in a corresponding manner such as to clearly indicate the overlapping teachings of both respective references to Bellesfield and Delorme and Bouve and Delorme in the separately stated rejections. As noted earlier, the combinability of the teachings of each pair of references in each stated rejection has not been argued before us.

We do not agree with Appellant's view expressed at page 5 of the principal Brief that Bellesfield does not generate a geometric curve shaped route to the extent recited in independent claims 29 and 38 in the first stated rejection. The reference to Bellesfield contains significant discussions of shape points with the initial discussion at column 1, lines 51 and 52 relating to shape information. Note also the shape of the route feature of element 144 in figure 10 of this reference. We have also indicated our view with respect to the teachings at column 9, lines 53 through 55 in the Bellesfield patent relied upon by the Examiner in the related appeal. The corresponding feature in the present Bellesfield's patent relied upon in this appeal begins at column 9, line 65.

We also do not agree with Appellant's views expressed at the bottom of page 5 of the principal Brief that the Examiner's correlation of Bellesfield's teachings regarding the generation of a first distance value between two labelled points "plus" an additional point does not meet the disputed feature of the generation of a second distance value representing "a function performed on" the first distance value. As we noted earlier in this appeal that the functionality of the generation feature may be performed by

the artisan/user of Bellesfield's system, Appellant appears not to appreciate the broad scope with which the second distance value is only broadly recited to be based upon a representation of a "function" performed on another value. Clearly, the addition of another distance or destination point to a previous determination of an overall distance value meets the broadly recited disputed "function" in the claims on appeal. The recitation of this broadly defined function in independent claims 29 and 38 does not distinguish over our consideration of the broadly recited "based on" recitations of the independent claims in the related appeal. Indeed, the function as broadly recited in claims 29 and 38 in this appeal may be performed within or by the artisan/user. No mathematical function is necessarily recited in the broad recitation of the claims on appeal in this appeal. The remarks at page 2 of the Reply Brief do not persuade us of the patentability of claims 29, 30, 38, and 39 in the first stated rejection.[1]

Consistent with what we have indicated earlier in this appeal, even the abstract of Delorme also clearly conveys to the artisan the broadly defined functional relationship between the first and second distance values of independent claims 29 and 38 on appeal. This abstract in conjunction with the summary of the invention between columns 5 through 11 of Delorme broadly indicate the user's ability to iteratively define, customize, revise or edit various routes and therefore distances associated therewith with various related functional radius variabilities for points of interest and types of

[1] To the extent the Examiner's remarks at pages 10 and 12 of the Answer suggest the lack of a written description of the claimed generation of the second distance based upon a first distance value, this position is misplaced for the reasons set forth by Appellant in the Reply Brief and because there is no stated rejection before us on this statutory bases.

points of interest within the variably defined user's regions of interest. Thus, at many levels of understanding, the user is clearly taught the ability to determine as well as the Delorme system to determine at the user's command the relationships between first and second distances.

These brief teachings noted here also directly relate to the broad recitation of a determination of a variable range based upon the number of locations of interest within a predefined distance of independent claims 32 and 35 in the second stated rejection. Likewise, the portions of this reference relied upon by the Examiner and the noted portions even briefly mentioned in the abstract and summary in Delorme enable the user in Delorme to change the radius and, therefore, the number locations within which the user may characterize as a region of interest or points of interest during the iterative route determination process comprehensively taught in Delorme.

The "scope of the vicinity" argument at page 9 of the principal Brief on appeal and further explained at page 3 of the Reply Brief is understood by us as relating to the feature of the range being determined based upon start information associated with the type of the location of interest in contrast to the Examiner's view at page 13 of the Answer that such feature is not recited in the claims on appeal. Even though the Examiner is technically correct, the argument is not misunderstood by us, even though, we find that the feature is taught in Delorme at a minimum.

Even within Bouve, the scope of the meaning of walking distance or scope of vicinity or range determined based upon stored information associated with the type of point of interest would vary based upon whether

the user was willing to walk to a restaurant or to a department store or some other point of interest. From our perspective and in consideration of an artisan's perspective of Bouve's and Delorme's teachings together, the ability to variable determine different ranges associated with different types of locations or points of interest is generally taught in both references to the extent broadly recited in independent claims 32 and 35 on appeal.

Lastly, it is not clear to us how the broad claims presented in this appeal distinguish in a patentable way over the broad teachings noted in Appellant's Specification as filed at page 13, lines 11 through 20 and page 14, lines 4 through 12. The same may be said of the claims in the related appeal. Correspondingly, the DeLorme patent relied on in this appeal appears to have clear applicability to the claims presented in the related appeal.

In view of the foregoing, the decision of the Examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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